

1644 \$

<b>FEE TRANSMITTAL</b>	<i>Complete if known</i>
	Application Number: <b>09/623,063</b>
	Filing Date: <b>October 24, 2000</b>
	First Named Inventor: <b>L. G. Durrant et al.</b>
	Title: <b>Anti-Angiogenic Vaccines: Substances and Methods Relating Thereto</b>
TOT. AMT. OF PAYMENT: (1) + (2) + (3) = \$ <u>120.00</u>	Our File No.: <b>0380-P02286US0</b>

METHOD OF PAYMENT (check one)	FEE CALCULATION (continued)																																																								
<input checked="" type="checkbox"/> Authorization is hereby granted to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account 04-1406. <input checked="" type="checkbox"/> Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims. <input checked="" type="checkbox"/> Any patent application processing fees under 37 C.F.R. § 1.17 Any extensions of time that are required to maintain this application in a pending status, if not included herewith, are hereby requested. Authorization is hereby granted to charge such extension fees to Deposit Account No. 04-1406. Two copies of this transmittal are enclosed for accounting purposes. <input checked="" type="checkbox"/> Payment enclosed: \$ <u>0.00</u>	<b>3. ADDITIONAL FEES</b> <table border="1"><thead><tr><th>Fee Description</th><th>Fee Paid</th></tr></thead><tbody><tr><td>Surcharge-late filing fee or oath</td><td>_____</td></tr><tr><td>Surcharge - late provisional filing fee or cover sheet</td><td>_____</td></tr><tr><td>Non-English specification</td><td>_____</td></tr><tr><td>For filing a request for reexamination</td><td>_____</td></tr><tr><td>Requesting publication of SIR prior to Examiner action</td><td>_____</td></tr><tr><td>Requesting publication of SIR after Examiner action</td><td>_____</td></tr><tr><td>Extension for response within first month</td><td><u>120.00</u></td></tr><tr><td>Extension for response within second month</td><td>_____</td></tr><tr><td>Extension for response within third month</td><td>_____</td></tr><tr><td>Extension for response within fourth month</td><td>_____</td></tr><tr><td>Notice of Appeal</td><td>_____</td></tr><tr><td>Filing a brief in support of an appeal</td><td>_____</td></tr><tr><td>Request for oral hearing</td><td>_____</td></tr><tr><td>Petition to institute a public use proceeding</td><td>_____</td></tr><tr><td>Petition to revive unavoidably abandoned application</td><td>_____</td></tr><tr><td>Petition to revive unintentionally abandoned application</td><td>_____</td></tr><tr><td>Issue fee</td><td>_____</td></tr><tr><td>Advance Order (10 copies)</td><td>_____</td></tr><tr><td>Publication Fee</td><td>_____</td></tr><tr><td>Petitions to the Commissioner</td><td>_____</td></tr><tr><td>Petitions related to provisional applications</td><td>_____</td></tr><tr><td>Submission of Information Disclosure Stmt.</td><td>_____</td></tr><tr><td>Recording each patent assignment per property (times number of properties)</td><td>_____</td></tr><tr><td>Filing a submission after final rejection (37 CFR 1.129(a))</td><td>_____</td></tr><tr><td>For each additional invention to be examined (37 CFR 1.129(b))</td><td>_____</td></tr><tr><td>Other fee (specify) _____</td><td>_____</td></tr><tr><td colspan="2"><b>SUBTOTAL (3) \$ <u>120.00</u></b></td></tr></tbody></table>	Fee Description	Fee Paid	Surcharge-late filing fee or oath	_____	Surcharge - late provisional filing fee or cover sheet	_____	Non-English specification	_____	For filing a request for reexamination	_____	Requesting publication of SIR prior to Examiner action	_____	Requesting publication of SIR after Examiner action	_____	Extension for response within first month	<u>120.00</u>	Extension for response within second month	_____	Extension for response within third month	_____	Extension for response within fourth month	_____	Notice of Appeal	_____	Filing a brief in support of an appeal	_____	Request for oral hearing	_____	Petition to institute a public use proceeding	_____	Petition to revive unavoidably abandoned application	_____	Petition to revive unintentionally abandoned application	_____	Issue fee	_____	Advance Order (10 copies)	_____	Publication Fee	_____	Petitions to the Commissioner	_____	Petitions related to provisional applications	_____	Submission of Information Disclosure Stmt.	_____	Recording each patent assignment per property (times number of properties)	_____	Filing a submission after final rejection (37 CFR 1.129(a))	_____	For each additional invention to be examined (37 CFR 1.129(b))	_____	Other fee (specify) _____	_____	<b>SUBTOTAL (3) \$ <u>120.00</u></b>	
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Submitted By:

Typed or

Printed Name Patrick J. Hagan Reg. Number 27,643

Signature Patrick J. Hagan

Date December 20, 2004

Deposit Account User ID

04-1406



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : L. G. Durrant et al.  
Serial No. : 09/623,063  
Filing Date : October 24, 2000  
Examiner : R. Schwadron Ph.D.  
Group Art Unit : 1644  
Entitled : Anti-Angiogenic Vaccines:  
Substances and Methods  
Relating Thereto

Suite 2400  
1601 Market Street  
Philadelphia, PA 19103  
(215) 563-4100 (telephone)  
(215) 563-4044 (facsimile)  
Our File No. 0380-P02286US0

Certificate of Mailing Under 37 C.F.R. §1.8(a):

I hereby certify that this correspondence is being deposited on December 20, 2004 with the United States Postal Service as first-class mail in an envelope properly addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Caren Burgoon  
Caren Burgoon

Petition for Extension of Time Under 37 C.F.R. §1.136(a):

The undersigned hereby petitions for an extension of time of one (1) month beyond the time period set in the last Office Action. Please charge the \$120.00 extension fee and any deficiency or credit any overpayment to Deposit Account No. 04-1406.

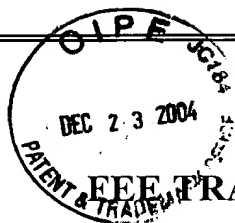
12/27/2004 RFEKADU1 00000012 041406 09623063

01 FC:1251 120.00 DA

Patrick J. Hagan  
Patrick J. Hagan  
Attorney for Applicant(s)  
Registration No. 27,643

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Traversal and Request for Reconsideration  
of Requirement for Election of Species



# TRANSMITTAL

Complete if known

Application Number: **09/623,063**

Filing Date: **October 24, 2000**

First Named Inventor: **L. G. Durrant et al.**

Title: **Anti-Angiogenic Vaccines: Substances and Methods Relating Thereto**

TOT. AMT. OF PAYMENT: (1) + (2) + (3) = \$ 120.00

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## METHOD OF PAYMENT (check one)

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☒ Any filing fees under 37 C.F.R. §1.16 for the presentation of extra claims.

☒ Any patent application processing fees under 37 C.F.R. §1.17

Any extensions of time that are required to maintain this application in a pending status, if not included herewith, are hereby requested. Authorization is hereby granted to charge such extension fees to Deposit Account No. 04-1406. Two copies of this transmittal are enclosed for accounting purposes.

☒ Payment enclosed: \$ 0.00

## FEE CALCULATION

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SUBTOTAL (1) \$ \_\_\_\_\_

### 2. CLAIMS

	Extra	Fee	Fee Paid
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Total Claims Presented \_\_\_\_\_ -  $\frac{20}{(a)}$  = 0 x  $\frac{25.00/50.00}{}$  = 0.00

Independent Claims

Presented \_\_\_\_\_ -  $\frac{3}{(b)}$  = 0 x  $\frac{100.00/200.00}{}$  = 0.00

Multiple Dependent Claim (first presentation)

\_\_\_\_\_ = 0

(a) Enter 20 or number previously paid for

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## FEE CALCULATION (continued)

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Other fee (specify) _____	_____

SUBTOTAL (3) \$ 120.00

Submitted By:

Typed or

Printed Name Patrick J. Hagan Reg. Number 27,643

Signature Patrick J. Hagan

Date December 20, 2004

Deposit Account User ID

04-1406

Dear Sir:

Applicants, through their undersigned attorneys, hereby traverse and request reconsideration of the requirement for election of species set forth in the Official Action dated October 20, 2004 in the above-identified patent application.

At the outset, it is noted that an initial shortened statutory response period of one (1) month was set in the October 20, 2004 Official Action. A petition for a one (1) month extension of the response period is being filed with this Traversal and Request for Reconsideration of Requirement for Restriction, which is being filed before the expiration of the one (1) month extension period.

The requirement for election of species in this case is improper for a number of reasons.

First of all the subject matter identified as the allegedly "patentably distinct species of the claim invention" are not species at all. A fusion protein is not a species, nor is a non-fusion protein. A species of any genus is a specific thing.

More importantly, the present requirement fails to comply with the relevant provisions of the Manual of Patent Examining Procedure (M.P.E.P.) pertaining to unity of invention determinations.

The present application was filed under 35 U.S.C. §371 as a U.S. national stage application under the Patent Cooperation Treaty.

As stated in 1893.03(d) of the M.P.E.P.:

Examiners are reminded that unity of invention (not restriction) practice is applicable in international applications (both Chapter I and II) and in national stage (filed under 35 U.S.C. 371) applications...

The principles of unity of invention are used to determine the types of claimed subject matter and the combination of claims to different categories of invention that are permitted to be included in a single international or national stage patent application. The basic principle is that an application should relate to only one invention or, if there is more than one invention, that applicant would have a right to include in a single application only those inventions which are so linked as to form a single general inventive concept.

A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art....

In the present case, all of the pending claims include as the special technical feature the Tek protein epitones set forth in claim 104. Indeed, claim 115, which is directed to a fusion protein, is dependent from claim 104. Clearly, these are related inventions and not patentably distinct.

The impropriety of this requirement is underscored by the fact that there was no lack of unity objection during the international stage of this application. Rather, the subject matter of all of the claims was treated as a single inventive concept.

As the October 20, 2004 Official Action fails to comply with established United States Patent and Trademark Office unity of invention practice, it is respectfully submitted that this requirement should be reconsidered and withdrawn.

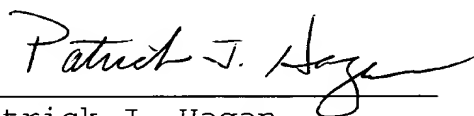
In order to be fully responsive to the above-mentioned requirement, applicants hereby elect nucleic acid molecules encoding non-fusion proteins. Claims 104-114 and 117-132 are believed to read on the elected subject matter.

Applicants' election in response to the present requirement for election of species is without prejudice to their right to file one or more continuing applications, as provided in 35 U.S.C. §121, on the subject matter of any claims finally held withdrawn from consideration in this application.

Early and favorable action on the merits of this application is respectfully requested

Respectfully submitted,

DANN, DORFMAN, HERRELL and SKILLMAN



Patrick J. Hagan  
Reg. No. 27,643  
Attorney for Applicants

PJH:cmb